

January 14, 2005

To: Examiner Khai Tran (via fax)  
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Re: Application Serial No. 09/499,014  
Outline of points for January 18, 2005 telephone interview with Examiner Tran

Claims 1-11, 17-22 (including independent claims 1, 10, 17, 21 and 22) have been allowed.

Claims 12-16 stand rejected under § 112 for indefiniteness and under § 102 in view of Olafsson USP 6,163,570. Applicant respectfully traverses.

In response to the § 112 rejection, Applicant proposes the following amendment to claim 12. Applicant submits that this amendment overcomes the basis for Examiner's § 112 rejection:

12. (Amended) In a PCM modem system including an analog modem coupled to a digital modem, a method for controlling a transmit power of either of the modems comprising [using a measured];  
measuring a transmit power level of at least one of the analog modem and the digital modem; and  
using the transmit power level as a parameter in designing a constellation.

In response to the § 102 rejection over Olafsson, Applicant distinguishes its invention on the following basis, which can be further elaborated upon in the January 18, 2005 interview:

Applicant's invention requires a "measuring" step. Olafsson does not have a measuring step. Although Olafsson uses a "transmit power limit" (col. 5, line 29) and a "transmit power formula" (col. 5, line 38), neither of these are measured. Olafsson discloses performing a calculation and verifying that calculation, but does not disclose "measuring a transmit power level" as claimed by the Applicant. Accordingly, Applicant's invention is not anticipated by Olafsson.

Inasmuch as claim 12 is clearly distinguished from Olafsson, dependent claims 13-16 are also distinguished. Accordingly, the allowance of claims 12-16 is respectfully requested.

Respectfully Submitted,

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